

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BERG CHILLING SYSTEMS INC.,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
HULL CORPORATION, et al.,	:	No. 00-5075
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

January 11, 2005

This case arises from the failure of a food freeze drying system to perform to specifications. The Court entered a judgment on June 10, 2003 (the “District Court Order”), *Berg Chilling Sys., Inc. v. Hull Corp.*, Civ. A. No. 00-5275, 2003 WL 21362805, 2003 U.S. Dist. LEXIS 9936 (E.D. Pa. June 10, 2003), which the Third Circuit reversed on appeal on May 25, 2004 (the “Third Circuit Opinion”), *Berg Chilling Sys., Inc. v. Hull Corp.*, 369 F.3d 745 (3d Cir. 2004). On remand, the Court issued a decision (the “August 3 Order”) in which it held, as directed by the Third Circuit, that Plaintiff Berg Chilling Systems, Inc. (“Berg”) and Defendant SP Industries, Inc. (“SPI”) are entitled to attorneys’ fees and costs from Defendant Hull Corporation (“Hull”). (August 3 Order at 10.) Presently before the Court are the fee petitions of SPI and Berg. Following consideration of those petitions, attorneys’ fees and costs are now awarded as set forth below.

I. BACKGROUND

The Court will briefly restate the facts that relate to the outstanding fee petitions. In March 1995, Berg, a Canadian corporation, contracted to supply a food freeze drying system to Huadu Meat Products Company (“Huadu”), a Chinese company. *Berg Chilling*, 369 F.3d at 747. Berg then

contracted with Hull, a Pennsylvania entity, to obtain freeze dryers for that system. *Id.* at 748. However, as a result of problems that arose during delivery and shipment, the freeze dryers did not function properly by the time Huadu received them. *Id.* at 748-49.

On March 29, 1999, after efforts to repair the freeze dryers proved unsuccessful, Huadu filed an international arbitration action against Berg. *Id.* at 750-51. Berg requested that Hull participate in the arbitration by engaging in a joint defense against Huadu, but Hull refused. *Id.* at 751. On December 7, 2000, the arbitrators found Berg liable to Huadu for approximately \$2.5 million. *Id.* at 752. Berg and Huadu then entered into a settlement agreement under which Berg agreed to refund \$1 million to Huadu and to allow Huadu to retain the freeze dryers, an “equipment credit” that Berg and Huadu valued at \$650,000.00. *Id.*

Before reaching this settlement, Berg filed the above-captioned action seeking, inter alia, indemnification from damages awarded to Huadu in the arbitration. *Id.* Berg named both Hull and SPI as defendants because SPI, a New Jersey corporation, had purchased the division of Hull that had produced the freeze dryers for Berg. *See id.* at 749-50, 752. On June 10, 2003, following a bench trial in January 2003, the Court ruled: (a) against Berg on its claim for indemnification from the \$650,000.00 equipment credit and attorneys’ fees and costs; (b) in favor of Berg and against Hull for one-third of the \$1 million settlement payment; (c) in favor of Berg and against SPI for another one-third of that payment; and (d) against Hull and SPI on their respective cross-claims for indemnification. *Berg Chilling*, 2003 WL 21362805, at *12-13. On May 25, 2004, the Third Circuit reversed, holding that: (a) Hull is liable to Berg in the amount of \$1 million plus the equipment credit and attorneys’ fees and costs incurred in the arbitration proceeding; and (b) Hull is liable to

SPI for indemnification, including attorneys' fees and costs.¹ *Berg Chilling*, 369 F.3d at 766. The Third Circuit remanded the question of whether SPI is liable to Berg for indemnification, and on August 3, 2004, the Court held that it is not. (August 3 Order at 10).

The Third Circuit also directed the Court to make certain findings regarding Hull's indemnification obligations. First, the Third Circuit instructed the Court to "conduct a thorough analysis of the attorneys' fees and costs expended by Berg in the arbitration proceeding to determine whether they were reasonable and to issue an appropriate award." *Berg Chilling*, 369 F.3d at 763. Moreover, the Third Circuit stated that the Court "should determine the reasonable attorneys' fees and costs which SPI expended in defending this litigation and issue an award . . . in its favor and against Hull." *Id.* at 766. Accordingly, on August 3, 2004, the Court adopted the Third Circuit's ruling on Hull's liability and further ordered SPI and Berg to "submit briefs regarding damages and any other outstanding issues remaining in this case." (August 3 Order.) Thereafter, SPI and Berg filed their respective fee petitions. Hull, which is no longer in business and has no assets, has not responded to these petitions.² (*See* Mot. of Gregory Liacouras, Esq. and Liacouras & Smith, LLP for Leave to Withdraw as Counsel for Hull Corporation at 1.)

¹ The Third Circuit's finding that Hull is liable to SPI for indemnification was based on the Asset Purchase Agreement between Hull and SPI, which states that Hull must defend and indemnify SPI as to any "liability or obligation of Seller." *Berg Chilling*, 369 F.3d at 766.

² Although neither petition is contested by Hull, Berg's petition has been contested by SPI because of the possibility that the Third Circuit may overturn the Court's finding that SPI is not liable to Berg. Berg recently appealed the August 3 Order to the Third Circuit and has asked the Court to resolve its fee petition before that appeal goes forward. (Letter from Pat Loftus dated Nov. 10, 2004.) As SPI correctly notes, a reversal of the August 3 Order may prompt Berg to seek to recover its fees from SPI instead of Hull, and therefore, it is appropriate for SPI to object to Berg's petition at this time. (SPI's Resp. to Decl. of R. Nairn Waterman at 1 n.1.)

II. STANDARD OF REVIEW

In general, an indemnitee may recover attorneys' fees and costs incurred in defense of an indemnitor.³ *Fleck v. KDI Sylvan Pools, Inc.*, 981 F.2d 107, 117 (3d Cir. 1992). The burden rests with the party seeking such fees to prove their reasonableness. *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990). Furthermore, "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *see also Washington v. Phila. County Court of Common Pleas*, 89 F.3d 1031, 1035 (3d Cir. 1996). Although this formula, known as the "lodestar," was developed in the context of statutory fee awards, courts have also employed it to award attorneys' fees under indemnity contracts. *See, e.g., Natco Ltd. P'ship v. Moran Towing of Fla.*, 267 F.3d 1190, 1196 (11th Cir. 2001) (holding district court correctly calculated lodestar to assess attorneys' fees under terms of indemnity agreement); *Peter Fabrics, Inc. v. S.S. Hermes*, 765 F.2d 306, 319 (2d Cir. 1985) (finding district court justifiably used lodestar as

³ Notably, indemnification principles allow Berg and SPI to recover fees from Hull under either Pennsylvania or New Jersey law. The Third Circuit directed the Court to address whether Pennsylvania or New Jersey law governs Berg's fee request, but noted that the choice may not be necessary if the result of either state's law would be the same. *Berg Chilling*, 369 F.3d at 762. Although New Jersey's rule on this issue appears to be stricter than Pennsylvania's, both New Jersey and Pennsylvania law allow an indemnitee to recover attorneys' fees from an indemnitor if the indemnitee was adjudicated to be free of active wrongdoing. *Compare Mantilla v. NC Mall Assocs.*, 770 A.2d 1144, 1151 (N.J. 2001), *with Rubin Quinn Moss Heaney & Patterson, P.C. v. Kennel*, 832 F. Supp. 922, 933 (E.D. Pa. 1993) (stating broader Pennsylvania rule). As the Third Circuit determined that Berg was not at fault, Berg is entitled to fees under both New Jersey and Pennsylvania law. *See Berg Chilling*, 369 F.3d at 756 ("[I]t is clear that among Berg, Hull and SPI no damages should have been assessed against Berg."). Moreover, although the Third Circuit did not state that a similar choice of law must be made with regard to SPI's fee request, the Court nonetheless observes that SPI could recover fees from Hull under the law of either state, as SPI, like Berg, was adjudicated to be free of active wrongdoing. (*See August 3 Order* (entering judgment in favor of SPI).)

starting point in fixing fees under contract of indemnity).

III. DISCUSSION

SPI has requested \$963,225.58 for fees incurred in defending the instant action, while Berg has requested \$ 476,064.02 for fees incurred during its arbitration with Huadu.⁴ The Court will now evaluate the reasonableness of these requests in turn, as per the Third Circuit’s explicit instructions. In making this assessment, moreover, the Court will be guided by the lodestar formula and will examine hours expended and hourly rates charged.

A. SPI’s Fee Petition

SPI has petitioned the Court for \$963,225.58, a sum comprised of \$884,907.14 in attorneys’ fees and \$78,318.44 in costs. The detailed billing sheets submitted by SPI describe the hours worked by various attorneys, the amounts charged by those attorneys per hour, and the costs expended on various litigation-related activities. (*See* Appendix in Support of SPI’s Brief in Support of Damages [hereinafter “SPI Appendix”].) Although SPI’s petition is unopposed, the Court must review the requested fees for reasonableness. *See Berg Chilling*, 369 F.3d at 766; *see also Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001) (noting that courts have a “positive and affirmative function in the fee fixing process, not merely a passive role”). For the reasons that follow, the Court reduces SPI’s request only slightly and awards SPI a total of \$961,840.06.

⁴ Initially, Berg requested only \$454,115.26 for its arbitration fees. (*See* Supplemental Brief of Berg Pursuant to the Court’s August 3 Order at 6.) By Order of November 22, 2004, however, the Court directed Berg to submit additional evidence of the reasonableness of its fee request. On December 6, 2004, Berg submitted such additional evidence, and with that evidence included a previously unsubmitted invoice for work billed. That invoice reflected additional attorneys’ fees, raising Berg’s total fee request to \$476,064.02. (*See* Waterman Decl. ¶ 12.)

1. *Attorneys' Fees*

a. *Hours Expended*

When calculating the reasonable number of hours expended, a court should exclude hours that are excessive, redundant, or otherwise unnecessary, and hours that were spent litigating claims on which the party did not succeed. *Rode*, 892 F.2d at 1183 (citations omitted). The Court finds that, in this case, no such exclusion is required. The hours expended on the above-captioned action, which have been well-documented by SPI, “cover the time spent on all of the pretrial work, the trial itself, post trial briefing, appeals to the Third Circuit, and further briefing on remand to this Court.” (Adelman Decl. ¶ 5.) These hours were not excessive, redundant or otherwise unnecessary considering the length of time this case has been pending and the complexity of the issues presented. Moreover, none of these hours were spent litigating claims on which SPI did not succeed, as the Court ultimately entered a judgment in SPI’s favor against both Hull and Berg. (August 3 Order.) Accordingly, the Court is satisfied that the hours expended were reasonable and finds no grounds to reduce them.

b. *Hourly Rate*

In general, “a reasonable hourly rate is calculated according to the prevailing market rates in the relevant community.” *Maldonado*, 256 F.3d at 184 (citations omitted). Courts in this District frequently look to the Community Legal Services, Inc.’s fee schedule (“CLS fee schedule”) as a fair reflection of prevailing market rates. *Id.* at 187 (describing CLS fee schedule with approval); *see also Rainey v. Phila. Hous. Auth.*, 832 F. Supp. 127, 129 (E.D. Pa. 1993) (same). In this case, the bulk of SPI’s legal work was performed by legal assistants and attorneys at Drinker, Biddle & Reath, LLP (“Drinker Biddle”), who charged rates ranging from \$70.00 per hour to \$395.00 per hour. (SPI

Appendix Ex. A Tab 2.) These rates appear to be commensurate with the CLS fee schedule. For instance, Charles Reid, a partner who has been with Drinker Biddle for over twenty-five years, charged SPI between \$305.00 and \$395.00 per hour (*id.*); these rates fall within the schedule, which suggests that an attorney who has been practicing for more than twenty-five years should charge between \$310.00 and \$400.00 per hour. The rates for other attorneys at the firm are similarly within the schedule's range. The Court therefore finds the hourly rates charged by Drinker Biddle reasonable and will not reduce them.

Some of the rates charged by SPI's other attorneys, however, are higher than those proposed by the CLS fee schedule. Norman Greenspan, a partner at Blank Rome, LLP ("Blank Rome"), charged SPI between \$435.00 and \$450.00 per hour. (*Id.*) This fee exceeds the highest amount recommended by the schedule, which is \$400.00 per hour. Similarly, Laurence Bronska, a partner at Winston & Strawn, LLP ("Winston & Strawn"), charged SPI \$450.00 per hour (*id.*), which also exceeds the schedule's recommended highest fee. The Court will thus reduce the rate of both of these attorneys to \$400.00 per hour.⁵ Moreover, the Court will reduce the rate of Blank Rome attorney Mary Ann Mullaney. Ms. Mullaney, who is now a partner, charged a rate of \$290.00 per hour, which is within the schedule's range for an attorney who has been practicing for twenty-one to twenty-five years. As Ms. Mullaney has only been practicing for approximately fourteen years,

⁵ The Court observes that Mr. Bronska's fee could be reduced even further, as he has only been practicing law for approximately sixteen to twenty years and a rate of \$400.00 per hour is only recommended for attorneys who have been practicing for over twenty-five years. Winston & Strawn is based in Chicago, however, where market rates may be higher than those in Philadelphia. The Court will thus assume that a fee lower than \$400.00 per hour would depart too sharply from Mr. Bronska's usual billing rate in Chicago to be reasonable. *See Potence v. Hazelton Area Sch. Dist.*, 357 F.3d 366, 374 (3d Cir. 2004) (stating attorney's usual billing rate is good starting point for assessing reasonableness).

her rate will be reduced to \$260.00 per hour.

In light of these reductions, the Court awards SPI the following attorneys' fees: \$871,065.62 for Drinker Biddle's charges (the full amount requested); \$5,456.00 for Blank Rome's charges (rather than the \$5,966.52 requested); and \$7,000.00 for Winston & Strawn's charges (rather than the \$7,875.00 requested). SPI is therefore awarded \$883,521.62 in attorneys' fees.

2. *Costs*

SPI has also requested costs encompassing items and activities such as duplicating, Lexis and Westlaw research, travel, deposition transcripts, long distance phone calls, and faxes and delivery services. These costs are unchallenged, and given the lengthy nature of this litigation, the Court finds them reasonable. *See, e.g., Teamsters Pension Trust Fund v. Littlejohn*, 34 F. Supp. 2d 285, 288 (E.D. Pa. 1998) (awarding full amount of costs to fee petitioner for document production, duplications, faxing, etc. where costs appeared reasonable and had not been challenged); *In re Szostek*, Civ. A. No. 89-156, 1989 WL 79098, at *2, 1989 U.S. Dist. LEXIS 8021, at *4 (E.D. Pa. July 6, 1989) (awarding full amount of costs to fee petitioner where costs were recoverable under statute and were unopposed). Therefore, SPI is awarded the full amount of costs requested, \$78,318.44. (*See* SPI Appendix Ex. A. Tab 1.)

B. Berg's Fee Petition

Berg seeks \$476,064.02 in fees incurred during its arbitration with Huadu. According to R. Nairn Waterman, who served as lead counsel for Berg during the arbitration proceedings, this sum encompasses \$447,739.57 in attorneys' fees and \$28,324.45 in expert fees. (Waterman Decl. ¶¶ 6, 10-11). Although Hull has not contested this petition, SPI has objected to it on the grounds that Berg has not offered competent evidence regarding the amount of hours expended by its attorneys. (SPI's

Response to Decl. of R. Nairn Waterman at 2.) For the reasons that follow, the Court finds that Berg's supporting evidence is indeed insufficient and awards Berg \$386,516.11.

1. *Attorneys' Fees*

a. *Hours Expended*

In addition to making reductions for unnecessary hours and unsuccessful claims, “[t]he court can also deduct hours when the fee petition inadequately documents the hours claimed.” *Rode*, 892 F.2d at 1183; *see also Hensley*, 461 U.S. at 433. Although a fee petitioner need not present evidence of the exact number of minutes spent or the precise activity to which each hour was devoted, the documentation must be specific enough to allow the district court to determine if the hours claimed are unreasonable for the work performed. *Keenan v. City of Phila.*, 983 F.2d 459, 473 (3d Cir. 1992). In this regard, a fee petition should include “some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations, and the hours spent by various classes of attorneys, e.g., senior partners, junior partners, associates.” *Washington*, 89 F.3d at 1037-38 (*quoting Rode*, 892 F.2d at 1190).

Despite being afforded multiple opportunities, Berg has failed to present the Court with this type of information. Berg's initial submission, filed on August 30, 2004, consisted of a series of invoices that had been redacted to eliminate all description of the legal services rendered. (Supplemental Brief of Berg Pursuant to the August 3 Order Ex.2.) Finding this submission inadequate, the Court directed Berg to submit additional evidence so as to calculate a reasonable fee. (Order of Nov. 22, 2004.) Berg responded by resubmitting the same series of invoices (Waterman Decl. Ex. B) along with the declaration of Berg's lead counsel, who merely attests that her firm spent approximately 1,667 hours representing Berg and did so in “an efficient and cost-effective manner”

(*id.* ¶ 8). Finally, after SPI objected to Berg's petition on grounds of insufficient evidence, Berg filed a reply brief and attached an unredacted version of the same series of invoices. (Berg Reply Br. Ex. A.)

Even in their unredacted form, these invoices do not constitute adequate documentation of the tasks performed by Berg's attorneys and the time spent in performing them. For instance, a typical invoice charges Berg \$6,526.12 for professional services rendered between January 1, 1998 and June 30, 1998, and offers the following block description of the tasks performed:

Receiving audit enquiry and telephone discussion with D. Hart re: same; drafting audit response letter; telephone discussion with D. Hart re: minute books; telephone discussion with R. Kazimowicz re: Hull problem; reviewing materials received from R. Kazimowicz re: Hull problem; further telephone discussion with R. Kazimowicz to advise re: same; drafting letter of advice; advising R. Kazimowicz re: further issues; telephone discussion with R. Kazimowicz re: status with respect to SPI letter of no liability for Hull contract and requesting instructions re: U.S. searches; letter to D. Toner requesting U.S. searches; telephone discussion with D. Toner re: searches; telephone discussion with R. Kazimowicz re: research regarding timing of arbitration with respect to H.a. Du and related matters; telephone discussion with R. Kazimowicz re: various matters respecting Hull and H.a. Du; reviewing Stockholm Arbitration rules and forwarding same to R. Kazimowicz; telephone discussion with D. Toner re: final search results and telephone message to R. Kazimowicz re: same; telephone discussion with R. Kazimowicz re: late delivery claim by customer and advising re: same; telephone discussion with R. Kazimowicz re: Hull; reviewing fax from R. Kazimowicz re: latest proposals from Hull and expert's report; reviewing Hull materials; telephone conference call with D. Berggren and R. Kazimowicz re: Hull[.]

(*Id.* Ex. A at 1.) This entry, which encompasses a six-month period, does not even attempt to itemize the numerous individual tasks listed and gives no indication of the hours devoted to each task. From this invoice and the many other invoices like it, there is no way to determine whether the hours expended by Berg's attorneys were reasonable for the work performed. *See, e.g., Keenan*, 983 F.2d at 473-74 (holding monthly summaries of hours spent insufficiently specific where trial court

could only have speculated whether hours claimed were reasonable for work performed).

In light of Berg's inadequate documentation, the Court will reduce the amount of attorneys' fees awarded. The Court rejects SPI's suggestion that the fee request be denied in its entirety, as total denial of requested fees "is a stringent sanction, to be reserved for only the most severe of situations, and appropriately invoked only in very limited circumstances." *Pawlak v. Greenawalt*, 713 F.2d 972, 978 (3d Cir. 1983) (citation omitted). Outright denial is not appropriate here, for this is not an instance where "the party seeking fees decline[d] to proffer any substantiation in the form of affidavits, timesheets or the like, or whe[re] the application is grossly and intolerably exaggerated or manifestly filed in bad faith." *Id.* Instead, the appropriate response to Berg's insufficiently specific petition is to reduce the total amount awarded by a certain percentage. *See, e.g., Buse v. Vanguard Group of Inv. Cos.*, No. Civ. A. 91-3560, 1998 WL 54397, at *9, 1998 U.S. Dist. LEXIS 1242, at *30 (E.D. Pa. Jan. 30, 1998) (reducing fee award by 15%); *Carter-Herman v. City of Phila.*, No. Civ. A. 95-4030, 1997 WL 48942, at *4, 1997 U.S. Dist. LEXIS 1130, at *12-13 (E.D. Pa. Jan. 31, 1997) (reducing portion of fee award by 50%); *Hann v. Hous. Auth. of the City of Easton*, Civ. A. No. 87-5278, 1990 WL 102804, at *4, 1990 U.S. Dist. LEXIS 8916, at *11 (E.D. Pa. July 16, 1990) (reducing fee award by 25%). The Court finds that, in this case, the deficiencies in the records submitted warrant a 20% reduction in the amount of attorneys' fees awarded. *See Buse*, 1998 WL 54397, at *9 n.15 (illustrating district court's discretion in arriving at precise reduction percentage).

b. Hourly Rate

Berg has, however, introduced at least some competent evidence of the hourly rates charged. As stated previously, a reasonable hourly rate is generally "calculated according to the prevailing market rates in the relevant community." *Maldonado*, 256 F.3d at 184 (citations omitted). While

courts in this Circuit often use the CLS fee schedule to measure market rates, *see id.* at 187, a fee petitioner may also demonstrate that the requested rate is the community market rate “by the submission of affidavits of attorneys familiar with the hourly rates in the relevant market.” *Tobin v. Haverford Sch.*, 936 F. Supp. 284, 289 (E.D. Pa. 1996) (*citing Washington*, 89 F.3d at 1035-36). The declaration of Berg’s lead counsel, while not sufficient to compensate for Berg’s inadequate documentation of hours expended, sufficiently attests to the reasonableness of hourly rates charged. Mr. Waterman states that he and Brent McPherson performed the overwhelming majority of the work to defend Berg in the arbitration and that they billed approximately \$315.00 per hour and \$215.00 per hour respectively. (Waterman Decl. ¶ 7.) He further states that these rates are reasonable and in accordance with the prevailing legal rates for such services. (*Id.*) Finally, he indicates that the hourly rates charged by local counsel in China and Stockholm were consistent with the prevailing rates for such services in China and Stockholm at that time. (*Id.* ¶ 11.) With Mr. Waterman’s declaration, Berg has met its burden of demonstrating the reasonableness of the hourly rates charged and the Court will not make further reductions in this regard.

To summarize, Berg has requested \$447,739.57 in attorneys’ fees, but the deficiencies in Berg’s documentation prompt the Court to reduce that amount by 20%, or \$89,547.91. Therefore, Berg is awarded \$358,191.66 in attorneys’ fees.

2. *Expert Fees*

Berg has also requested fees for expert testimony and consultation regarding the functionality of freeze dryers at issue. Insofar as these fees are reasonable, Berg is entitled to recover them. *See Berg Chilling*, 369 F.3d at 762 (noting indemnification should include the reasonable attorneys’ fees and expert witness fees incurred in the arbitration proceeding). Berg retained two experts in

connection with the arbitration, Walt Pebley and Allen McKenzie, who charged hourly rates of \$160.00 per hour and \$150.00 per hour respectively. (Waterman Dec. ¶ 10.) Their invoices, which are included in Berg's fee petition (*id.* Ex. B), are detailed enough for the Court to assess the reasonableness of the hours they expended on the arbitration. The Court finds that both the hours expended and the rates charged by these two experts were reasonable and also observes that SPI has not objected to them. Therefore, Berg is awarded the full amount of expert fees requested, \$28,324.45.

IV. CONCLUSION

For the reasons stated above, SPI is awarded \$961,840.06 in attorneys' fees and costs and Berg is awarded \$386,516.11 in attorneys' fees and costs (including expert fees). An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BERG CHILLING SYSTEMS INC.,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
HULL CORPORATION, et al.,	:	No. 00-5075
Defendants.	:	

ORDER

AND NOW, this 11th day of **January, 2005**, upon consideration of Defendant SP Industries, Inc.'s ("SPI") Brief in Support of Damages (Document No. 181), Plaintiff Berg Chilling Systems Inc.'s ("Berg") Supplemental Brief Pursuant to the Court's August 3, 2004 Order and Declaration of R. Nairn Waterman (Document Nos. 182 and 191), all responses thereto and replies thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Judgment is **ENTERED** in favor of SPI and against Hull Corporation ("Hull") in the amount of Nine Hundred Sixty-One Thousand Eight Hundred Forty Dollars and Six cents (\$961,840.06) for attorneys' fees and costs incurred to date in defending the above-captioned matter.
2. Judgment is **ENTERED** in favor of Berg and against Hull as follows:
 - a. Hull is liable to Berg in the amount of One Million Six Hundred Twenty-Five Thousand Dollars and Zero cents (\$1,625,000.00) for the reasons set forth in the Court's Order of August 3, 2004.
 - b. Hull is liable to Berg for an Hundred Eighty-Six Thousand Five Hundred Sixteen Dollars and Eleven cents (\$386,516.11) for attorneys' fees and costs

(including expert fees) incurred in arbitration with Huadu Meat Products Company.

3. The Clerk of Court is directed to close this case.

BY THE COURT:

Berle M. Schiller, J.